

imum irrigated acreage he could find on protestant's land when it was surveyed was 61.1 acres, and that protestant is limited to his beneficial use requirements for this acreage regardless of the amount of acreage set forth in Certificate No. 363, since beneficial use is the measure and limit of any water right.

The State Engineer further asserts that, in any event, protestant cannot claim more than a right to irrigate 78.3 acres of land under Certificate No. 363, since it is limited to the irrigation requirements of a total of 105.6 acres and protestant has stipulated that Thurman Spencer is entitled to the irrigation requirements of 27.3 acres. This would leave a maximum of 78.3 acres which Leo Wilson could claim under said Certificate.

2. J.C. & LILLIE SPENCER

A. The State Engineer has proposed a priority for protestants under Water User's Claim No. 1180 of 1916, based upon adverse use. Protestants assert that their predecessors in interest began the use of water in 1908 and that the priority of their right under said Claim should date from the time the use first began. The State Engineer alleges that there is no basis for a priority date for protestants ahead of that set forth in the Proposed Determination of Water Rights. The State Engineer further alleges that in this regard he prepared the Proposed Determination, based upon an understanding reached by the parties at a hearing conducted by the State Engineer prior to the preparation of the Proposed Determination of Water Rights concerning the historic use of water from this source.

Protestants claim to a 1908 priority is qualified to the extent that if no downstream user is successful in establishing a priority ahead of protestants', then protestants will accept the priority set forth in the Proposed Determination.

B. Protestants claim that all users on Alvey Wash have historically maintained dry dams at their respective points of diversion and that the various downstream rights have been satisfied by return flow or natural accretions to the stream. Protestants